IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 1961 of 2004

in

SPECIAL CIVIL APPLICATIONNo 2727 of 1994

with

LETTERS PATENT APPEAL No 2645 of 2004

with

CIVIL APPLICATION No 8707 of 2004

For Approval and Signature:

HON'BLE DR.JUSTICE J.N.BHATT
and
HON'BLE MR. JUSTICE M.D. SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

STATE OF GUJARAT THRO SECRETARY EDUCATION DEPTT.

Versus

SOMABHAI MATHURBHAI VASAVA ADIVASI

Appearance:

1. LETTERS PATENT APPEAL No. 1961 of 2004
MR PR ABICHANDANI AGP for Appellant No.
..... for Respondent No. 1
MR ADIL MEHTA for Respondent No. 2
2. LETTERS PATENT APPEAL No. 2645 of 2004
MR DN PANDYA for Appellant No.
..... for Respondent No. 1

CORAM : HON'BLE DR.JUSTICE J.N.BHATT
and
HON'BLE MR. JUSTICE M.D. SHAH

Date of decision: 17/01/2005

ORAL JUDGEMENT

(Per : HON'BLE DR.JUSTICE J.N.BHATT)

Both these Letters Patent Appeals are filed by invocation of Clause 15 of the Letters Patent, challenging part of the order of the learned Single Judge recorded in SCA 2727/04 dated 23rd February, 2004 and has raised identical questions. Upon request, we have heard these appeals together and, therefore, they are being proposed to be disposed of by this common judgment.

2. We have heard the learned Advocates appearing for the parties. We have also followed and examined the text and tenor of the impugned judgment of the learned Single Judge and the relevant provisions of the circulars, as well as, the procedure followed for the employment of the original petitioner.

3. We are satisfied from the record and the facts stated in the judgment of the learned Single Judge that the selection of the original petitioner, one Somabhai M.Vasava, could not be said to be a back-door entry, as the appointment was made by public advertisement, inviting candidates to appear in the interview, and upon finding the original petitioner to be suitable, he came to be appointed as a Peon, as early as, in 1980. He also continued on the same post for a period upto 31st August, 1985. It is, therefore, apparent from the record that the original petitioner came to be appointed by the original Respondent No.3-Vikas Education Trust on 1.7.1980 and that too after observing and following the requisite procedure then in force. He continued to work till August, 1985 and, thereafter, his services came to be terminated, which is rightly found to be not legal and valid by the learned Single Judge.

4. Upon consideration of the Letters Patent Appeal, at the instance of the respondent-State, we find that there is no substance and, therefore, it deserves to be rejected at the admission stage. Again, a Letters Patent Appeal No.2645 of 2004 initiated at the instance of the original petitioner for a limited prayer of enhancement of the quantum of backwages, is also in our opinion meritless in the peculiar facts and special circumstances obtainable from the record of the present case. With a view to award backwages under the law, the Court is pledged to consider various aspects and circumstances and at times special reasons qua the petitioner. There cannot be a straight jacket formula, that whenever and wherever an employee is directed to be reinstated, invariably 100% backwages should follow award regardless of other special circumstances. This proposal is so vehemently urged before us by learned Advocate Mr.Pandya in the second Letters Patent Appeal, which cannot be accepted. In fact, there are hosts of judicial pronouncements and as propounded by case-law, the discretionary-power exercised, ordinarily should not be interfered with, unless, special and extraordinary circumstances exist and such circumstances do not exist. However, the reliance on a decision of the Hon'ble Division Bench of this Court reported in "Yamini J. Dave v. The Director , I.U.C.A.A.& Anr." 2004 (2) GLH by learned Advocate Mr. Pandya is considered by us, and in our opinion, it is of no avail to the petitioner for the simple reason that the factual profile in the present group of two Letters Patent Appeals are quite different. In the present case, firstly, the writ petition is not filed for a long spell of 9 years. It will be also material to note, at this juncture, that the petitioner had invoked the provisions of the Industrial Disputes Act, 1947 and hence, agitated his grievance before the Labour Court in a Reference, which was ultimately withdrawn. Therefore, the discretion exercised in awarding 50% of the backwages could not be said or it cannot be shown or spelt out from the record of the present group of two Letters Patent Appeals that it was unjust or unreasonable, requiring our interference in exercise of our powers under Clause 15 of the Letters Patent. Therefore, the Letters Patent Appeal No.2645/04, at the instance of original petitioner, is also required to be dismissed at the threshold.

5. In the result, both the Letters Patents shall stand dismissed at the admission stage. No order on Civil Application.

6. Before parting, learned Advocate Mr.Pandya

submits that the 50% backwages amount has yet not been paid fully and the petitioner was led to file an application for Contempt of Court for no fault of his own, even though, he has been awarded 50% backwages against the claim of 100%. We are fully concerned by this submission and the original respondents are directed to comply with the direction of the learned Single Judge on or before 28th February, 2005. The State is also directed to take immediate requisite actions so that the directions of the learned Single Judge could be scrupulously followed. In the event of any difficulty or non-compliance of the directions, as stated by us hereinabove on or before 28th February, 2005, it will be open for the original-petitioner to make an application to this Court for further direction.

(DR. J. N. Bhatt, J.)

(M. D. Shah, J.)

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